

TWYMAN O. ABBOTT.

APRIL 2, 1896.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SNOVER, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 7226.]

The Committee on Claims, to whom was referred the bill (H. R. 7226) for the relief of Twyman O. Abbott, of Tacoma, State of Washington, have given the same careful consideration and have unanimously agreed to the following report:

During the spring of 1889 the population and business of the city of Tacoma had increased to such an extent that it became imperative for the post-office facilities at that point to be improved so that the public interests should not suffer. The post-office was at that time located in very small quarters, poorly adapted in all respects for the transaction of the rapidly increasing postal business. With the end in view of securing permanent and adequate quarters, the Post-Office Department detailed an inspector to that city to enter into negotiations with such persons as might desire to submit proposals to provide such quarters for a term of five years. The said inspector, proceeding as directed, gave notice by public advertisement to all persons having offers to submit to present the same to him. Several persons, in answer to this advertisement, submitted such proposals, among them being the claimant, Twyman O. Abbott. The proposal of claimant was in the following language:

POSTMASTER-GENERAL OF THE UNITED STATES:

I hereby offer to build a brick building, either two or three stories in height, on lots three (3) and four (4), in block seven hundred and six (706), Tacoma, and give the Government for use as a post-office a room 30 by 120 feet on first floor, for the term of five years or more, in consideration of twelve hundred dollars per annum; and I also agree to furnish all fuel, lights, and furniture necessary for the use of said post-office, and to build a vault in said room of about the size of 6 by 6 by 10 feet, with proper shelving. The building will be similar to the plans enclosed and attached hereto.

Respectfully submitted,

T. O. ABBOTT.

P. S.—Please telegraph acceptance of this offer.

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All the propositions so presented were forwarded to the Post-Office Department, and after full consideration of the same, the foregoing proposal of claimant, being found to be the most advantageous offer submitted, was duly accepted, and plaintiff was instructed to proceed with the erection of the building. The claimant immediately proceeded to and did erect said building, and in so doing expended the sum of about \$115,000, and on or about the 1st day of January, 1890, the same was accepted by the Government and the post-office was removed thereto,

where it remained until about the 1st of October, 1890, when the said premises were abandoned by the Government and the post-office was removed to other quarters. The reason given for said abandonment will more fully appear below.

During the occupation of said premises as aforesaid the claimant incurred large expenses for equipment and maintenance of said post-office, which your committee finds were all incurred in the expectation and belief that the post-office would remain in his premises for a period of five years. Your committee also finds that the location of said post-office in claimant's premises for a period of five years was a very important and valuable consideration to him in his proposal, and that he offered his premises at a nominal rental in order to obtain the said post-office for a long period, for the purpose of attracting business and tenants to that portion of his building not occupied by the post-office.

Your committee also finds that the expenses incurred by claimant were legitimate and necessary expenses, to properly equip and maintain said postoffice in accordance with the terms of his proposal.

After the abandonment of his premises as aforesaid, claimant brought an action against the United States in the circuit court of the United States for the ninth judicial circuit, district of Washington, western division, to recover damages for the breach of said contract. Said action was brought under the act of 1887 (24 Stat. L., 505), which limits the amount of a claim to be enforced thereunder to \$10,000, and being a court of law, claimant could sue for only legal claims and not claims of an equitable nature.

Said action was fully tried before Hon. W. B. Gilbert, circuit judge for that circuit, by oral and written testimony, all the documents and correspondence relative thereto in possession of the Government being before said judge. And after hearing all the issues joined, the said judge rendered a decision finding all the facts in favor of the claimant and held that he had actually expended certain sums as aforesaid, in the total sum of \$6,145.75, as follows:

Balance due for rent.....	\$46.00
Temporary roof to admit post-office before building was completed.....	402.00
Lock boxes, desks, tables, and furniture.....	2,187.50
Vault for post-office supplies.....	600.00
Tile flooring for post-office (afterwards destroyed).....	625.00
Connecting "additional room" with "main room".....	375.25
Expense of replacing walls, etc., after removal of post-office from premises.....	3,000.00
Total.....	7,235.75
Deduct amount received from sale of fixtures after removal.....	1,090.00
Balance.....	6,145.75

By way of no voidance, however, the Government interposed the plea that the post-office authorities exceeded their authority in entering into such contract, and that the same was therefore null and void; that no contract for such purpose could be entered into for a longer term than the period of the current appropriation, or one year. After due consideration, said judge sustained this plea, and claimant was, and is, thereby, prevented from recovering the damages incurred by him. Claimant therefore comes before Congress seeking relief for damages as follows:

(1) For damages as adjudged by Hon. W. B. Gilbert, judge of the circuit court of the ninth circuit.....	\$6,145.75
(2) For gas, coal, coal oil, and electric lights used by post-office during occupancy of premises.....	1,318.00
(3) For balance of rent due.....	435.00

(4) For fair rent of premises during period of occupancy (nine months, at \$350).....	\$3, 150. 00
(5) For attorneys' fees, court costs, and expenses incident to the trial of the questions involved in the vacation of premises.....	1, 700. 00
(6) For depreciation of property after breach of contract, and losses and injuries to credit, resulting therefrom.....	15, 000. 00
Total.....	27, 748. 75

The reason of the abandonment of the premises of claimant is set forth in the fifteenth finding of fact by said judge, as follows:

That the said post-office premises were abandoned, and said post-office was removed to other quarters for the reason, as stated to plaintiff by the officials of the Post-Office Department, that the plaintiff's said premises were not conveniently located for post-office purposes.

Your committee also finds that the said premises were situated on the very lots and block offered by claimant, and inasmuch as no change occurred in the location of said premises after the making of said contract, we are unable to conclude that the ground of the removal was a just or proper one.

As to the various items of damage set forth by claimant, your committee finds as follows:

Item No. 1, "for damages as adjudged by Hon. W. B. Gilbert, judge of the circuit court for the ninth circuit, \$6,145.75." Your committee finds that the said sum was adjudged, after a full and fair trial as before stated, to have been expended for necessary and proper purposes, in which adjudication your committee concur, and we recommend that the same be paid.

Item No. 2, "for gas, coal, coal oil, and electric light, used by post-office during occupancy, \$1,318," your committee finds that this sum was actually expended by claimant for such purpose; that said heat and light was furnished at the instance and demand of the said post-office authorities, and in fulfillment of the terms of the said proposal agreeing to furnish the same; that said proposal to furnish said heat and light was upon the sole condition of the occupancy of said premises for a period of five years; and therefore claimant was damaged to the extent of said sum of \$1,318 by the failure of the Government to carry out the said contract. Your committee finds this item is fair and just, and that the consideration for such expense, to wit, occupation for five years, was not rendered by the Government, and therefore claimant is entitled to be reimbursed therefor, and we recommend that the same be paid.

Item No. 3, "to balance of rent due, \$435." Your committee finds that during the occupation of claimant's premises there became due him the total sum of \$1,080, of which he received only \$680, leaving a balance of \$400, which amount we find the claimant is entitled to receive, and recommend that the same be paid.

Item No. 4, "for fair rent of premises during period of occupancy (nine months), \$3,150. Your committee finds that the rental offered by claimant on condition of occupancy of his premises for a period of five years was \$100 per month; that suitable rooms for post-office purposes were at that time very difficult to obtain in said city of Tacoma; that rooms the size of the room provided by claimant could not then be had at all, and that said room was designed according to the size and plan suggested by the Post-Office Department; that a fair rent for said premises, in addition to that mentioned in his proposal, was \$350 per month, as is clearly shown from the affidavits of experienced persons in said city, and also from documents and letters in possession of the committee.

Item No. 5, "for attorneys' fees, court costs, and expenses incident to the trial of the questions involved in the vacation of premises, \$1,700." Your committee finds that said item is based upon expenses actually incurred for the purposes mentioned; that there was a full trial of the cause in the lower court, involving considerable expense for witnesses and attorneys' fees, and the appeal to the court of appeals involving expenses for transcripts, briefs, court costs, traveling expenses, attorneys' fees, and other expenses; that inasmuch as all of said expenses were rendered necessary by the breach of the contract aforesaid, and would not have been incurred but for said breach, in equity and justice claimant is entitled to be reimbursed therefor, and your committee recommends that the same be paid.

Item No. 6, "for depreciation of property after breach of contract and losses and injuries to credit resulting therefrom, \$15,000." Your committee finds that at the time said Post-Office Department called for proposals as aforesaid, claimant had not begun, nor had he in contemplation the erection of any building on said premises; that said building was wholly erected by virtue of the acceptance of his said proposal, upon the positive and distinct assurance by Government officials acting under the instructions of the Post-Office Department, and would not have been erected at all, except upon the condition that the same would be occupied for post-office purposes for the full period of five years, and yet, since the damages claimed under this item are somewhat remote and not satisfactorily proved, your committee is unable to recommend the payment thereof.

Your committee also finds that it has been the custom of the Post-Office Department for many years to make leases for a term of years; that certain forms are provided for such purpose, which it is customary to use, and which contain certain stipulations, conditions, and reservations favorable to the Government; that in the case of claimant it is undisputed and was admitted by the Government in the trial of said cause that no such forms were ever used, and no restrictions or conditions were brought to his attention or attached to his proposition as above set forth; that claimant did not know and could have no means of knowing that the post-office authorities had no power to make good and binding contracts as aforesaid; that the Government officials acted in good faith in attempting to make said contract, and claimant also carried out his proposal in good faith. Your committee is therefore clearly and unanimously of the opinion that the Government should reimburse him for all losses proven to have been sustained by him in connection with his said proposal.

We therefore find that there is due claimant the sum of \$12,713.75, as above set forth, and that the bill herewith be amended by striking out the words "twenty-seven thousand seven hundred and forty-eight," where it occurs in lines 6 and 7 of section 1, and lines 1 and 2 of section 2, and inserting in lieu thereof the words "twelve thousand seven hundred and thirteen," and, as amended, that the bill do pass.

Your committee also submits the following letters and affidavits in support of its recommendations:

The following letter was written by the attorney of the United States for the State of Washington, who represented the Government in the action above referred to in both the lower and appellate courts, and the indorsement is by the judge who heard the case, both of whom are well qualified to speak of the merits of the said claim, having heard all the evidence adduced at the trial of the said cause, and who are in possession of all the documents and records of the Post-Office Department rela-

tive to said claim and all other information affecting the rights of the parties:

TACOMA, WASH., February 21, 1896.

DEAR SIR: Your favor requesting me to state my views of the justice of your claim against the Government for damages resulting from the failure of the Post-Office Department to fulfill its contract for the rent of your building in Tacoma as a post-office is received.

In reply, I will say that while I have been of the opinion that the contract was void, and still entertain that opinion, and acting upon it successfully resisted your suit for damages in the courts, yet I think that there is justice in your claim and that Congress ought, and will, doubtless, so regard it, and reimburse you the amount of your loss growing out of the action of the Department.

Very respectfully,

WM. H. BRINKER.

TWYMAN O. ABBOTT, Esq.,
Tacoma, Wash.

(Indorsed:) I believe that there are equities in Mr. Abbott's case and that Congress ought to grant him relief.—William B. Gilbert.

On March 11, 1890, inspectors Munro and Brown, having been detailed to examine into complaints relative to the post-office at Tacoma, while the same occupied the premises of petitioner, among other things reported as follows, to George L. Seybolt, inspector in charge, San Francisco, which report was by him referred to the Post-Office Department:

We visited several premises suitable for a post-office. A building just completing owned by Collier & Hardenberg, 50 by 100, well lighted, situate on C street near ninth, rent asked \$4,800 per annum. L. E. Post, manager Tacoma Savings Bank, informed us that his building could be secured at a cost to the Government of \$2,400 rent. Mr. J. W. Anderson, manager Tacoma Land Company, and president Chamber of Commerce, would erect a building near this site for the same rental. Both these propositions implied that an additional rental would be contributed by parties who would be benefited by the location of the post office. * * * Mr. Post, Mr. Anderson, and other prominent business men, after consulting among themselves, thought that an attempt to move the office now would work manifest injustice to Mr. Abbott (the lessor) and they declined to make any definite proposals. Mr. Post expressed to us his opinion, that the present location is sufficiently central, suitable, and satisfactory to a majority of the business community, and stated that he believes that after consultation he expressed their views. * * * At our suggestion

Mr. Abbott has had a plan prepared by which more room can be added to the post-office by cutting off the rear ends of the adjoining store rooms, whereby a space 37 by 42 feet can be added to the post-office for a mailing room. Mr. Abbott thought this space should be worth \$60 per month, but finally proposed to make this alteration of the building and furnish the space for an additional rental of \$40 per month which will be a price for floor space proportional to that now paid. To do this he will be obliged to cancel his present arrangements with the future tenants of the two storerooms as the storerooms will be reduced in size from 80 feet in length to 55 feet. * * * He makes the offer at a pecuniary sacrifice and gives to the Government about two-thirds of the entire ground-floor space of the building at a rental far below the commercial value of such business property, and he also, upon our statement of the objections of the Department to business stands in post-office lobbies, relinquishes the right he thought he had reserved to himself to rent the two window corners of the post-office lobby, by which relinquishment he sacrifices \$150 per month, he having already agreed to rent one of the stands to a news dealer for \$75 per month and the other proposed stand had been spoken for at a similar rental. He began the erection of the building only upon the understanding that the post-office would be located in it, and he feels it to be, as it in fact is, to his vital interest that the office should remain where it now is.

Under date of June 17, 1889, R. W. Haynes, Acting Assistant Attorney-General, in acceptance of the proposal of claimant, addressed Hon. E. G. Rathbone, chief post-office inspector, as follows:

Please have the inspector supervise the matter of erection and putting up of this building, and, together with the postmaster, aim to secure a fine office at Tacoma, one that will, if possible, meet the wants of the community for the next five years. The inspector will advise the postmaster of the receipt of these instructions, and

when the new quarters are ready, in the absence of further instructions, see that the post-office is moved thereto, returning the accompanying "lease queries" fully answered, in order that the leases may be prepared and sent forward for execution. The inspector will inform Mr. Abbott that he will proceed at once to erect the building, as these instructions are sufficient.

Also on October 12, 1889, E. P. Treutlen, then inspector, addressed the following letter from Portland, Oreg., to the claimant:

Your favor to hand, and contents noted. I am not aware of any effort being made by any person to persuade or induce the Department not to accept your building for the post-office. No lease can be made until the building is completed and the post-office effects moved into it. You need not worry yourself about the Department not accepting the building. They have already sent me the lease queries for you to fill out as soon as the building is completed. What about the additional lock boxes? Please have them on hand by November 15. Push the work ahead as fast as possible.

Also under date of January 3, 1890, George L. Seybolt, inspector in charge of the San Francisco division, addressed Mr. Rathbone as follows:

The location of this office has been the subject of considerable adverse comment, and I am free to say that if I had visited Tacoma before the acceptance of the proposition I should have hesitated to indorse Mr. Treutlen's recommendation; but Mr. Abbott having gone on in good faith and built the building and furnished the same at considerable expense, good faith on the part of the Government demands that he be given a lease in accordance with his proposition.

STATE OF WASHINGTON, *County of Pierce ss:*

I, John D. Hogue, being first duly sworn, do depose and say that during the years 1888, 1889-1890, I was postmaster at the city of Tacoma, State of Washington; that during the years 1888 and 1889, owing to the rapid increase of post-office business at said city, it became necessary to provide for better quarters than was then had for post-office purposes; that about the month of June, 1889, the Government, through the Post-Office Department, sent one E. B. Treutlen, then an inspector and agent of the Government, to take steps to provide for the demands of the service in this respect; that said Treutlen came to Tacoma, and, by public notice through the press, called for proposals to furnish the Government quarters for post-office purposes for a period of five years; that in response to said notice several such proposals were submitted to the Postmaster-General of the United States; that among those proposals was one by T. O. Abbott; that after several weeks investigation and consideration of the said proposals the proposal of said Abbott was accepted as providing the largest space for the smallest amount of rent; that at the time of the acceptance of said proposal there was no building on the premises; that immediately thereafter said Abbott began the erection of the building as proposed, and subsequently, to wit, on the 28th of December 1889, said post-office was removed to said building under the instructions of the Post-Office Department, two inspectors being present and assisting in said removal; that said post-office remained in said building for a period of nine months when the Government, by order of the Post-Office Department, vacated the same; that during the period of said occupancy, said Abbott expended large sums of money in equipping the quarters used for post-office purposes, in making many changes from time to time needed and required, and in furnishing light and heat for the same; that he at all times used his best endeavors to fulfill the terms of his contract even better than required; that I believe that the removal of the post-office from his quarters was wholly due to an unwarranted opposition to the location and the desire of interested persons to have it located near their places of business, so as to benefit their trade; that I always believed and still believe that the location of said Abbott's said building as suitable and convenient as any other in the city; that of my own personal knowledge the vacation of said premises worked a very serious injury and great personal loss to said Abbott.

J. D. HOGUE.

Subscribed and sworn to before me, this 17th day of February, 1896.

[SEAL.]

W. A. FAIRWEATHER,

County Clerk and Clerk of the Superior Court for Pierce County.